IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY NINTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 16958 of 2002

Between:

M/s Jaya Garments

Chikkadpally, Hyderabad

Rep. By its proprietor

K. Prakash

Chikkadpally, Hyderabad.

... PETITIONER

AND

1 Authority under Section 48 of the A.P.Shops and Establishements Act and

Assistrant Commissioner of Labour, Circle-III, T.Anjaiah Bhavan

RTC Cross Roads, Hyderabad - 20

2 Ms. N. Amita, R/o 2-4-1017, Nimboliadd, Bandalbasti, Hyderabad

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for records from the 1st respondent and issue an appropriate Writ, Order or Direction, particularly one in the nature of Writ of Certiorari, and quash the Order passed by the 1st respondent in S.E>No.8 of 2002, dated 24.07.2002, holding the same as illegal, unjust, contrary to law and without jurisdiction, and grant all consequential benefits and pass such other order or orders as deemed fit and proper

Counsel for the Petitioner: MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondent No.1: The Government Pleader for Labour

Counsel for the Respondent No.2: MR.SARIKONDA RAMAKRISHNA

The Court Made the Following Order:

ORDER:

The second respondent claiming to be in the employment of the writ petitioner since 1996 and claiming that she was orally terminated from service filed an application S.E.No.8 of 2002 before the authority under the Andhra Pradesh Shops and Establishments Act 1988 (the Act) for reinstatement with continuity of service and other benefits. The writ petitioner responding to the summons issued filed a counter affidavit, denying the allegations of the second respondent herein and contended that the second respondent's employment was never terminated and that she is at liberty to come and join service by explaining reasons for her unauthorised absence from 01.03.2002. The second respondent herein adduced some oral and documentary evidence. The writ petitioner, however, was found absent at the hearing and was set *ex parte*.

The first respondent recorded that the employment relationship between the writ petitioner and the second respondent till 01.03.2002 was not in dispute. As regards the question whether the employee was terminated without giving any

reasons, the first respondent authority has recorded that this question has lost relevance in view of the statement in her evidence expressing a desire for settlement of her terminal benefits as she was no more interested to continue in the employment with the respondent and that, therefore, the legality or otherwise of the termination need not be and is not determined.

On this erroneous reason recorded, the first respondent authority has determined that the second respondent is entitled to wages for February 2002; service compensation from 1988 to 2002 @ 15 days per year and leave with wages upto a maximum of 60 days and awarded Rs.23,000/- as compensation.

It requires to be noticed that the conclusion of the first respondent authority is irrational and unsustainable. The second respondent being the claimant is required to substantiate her claims. She was required to adduce evidence as to the period of her employment as also adduce evidence as to the factum of her termination. Only on these facts having been established by way of cogent and reliable evidence adduced by the second respondent herein, the first respondent was required to record his findings as to the period for which the second respondent was in employment and as to whether she was terminated on a particular date and if so whether such termination was illegal. On such determination alone would the second respondent herein be entitled for benefits under the provisions of the Act. The first respondent could not have granted any relief to the second respondent herein without recording a finding as to whether she was terminated from service and illegally.

On the above analysis the impugned order dated 24.07.2002 of the first respondent beseeches invalidation and is accordingly set aside. The matter is now remanded to the first respondent to consider the evidence already on record and decide the issues that arise for determination by recording reasons. As the second respondent is demonstrably out of employment since 01.03.2002 the first respondent shall proceed to determine S.E.No.8 of2002 expeditiously and in any case within a period of three months from the date of receipt of a copy of this order.

Writ Petition is disposed of. No costs.

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(GODA RAGHURAM, J)

June 29, 2004

Dsk/Pvks

To

1 Authority under Section 48 of the A.P.Shops and Establishements Act and

Assistrant Commissioner of Labour, Circle-III, T.Anjaiah Bhavan

RTC Cross Roads, Hyderabad - 20

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